

STATE OF CALIFORNIA
TRANSMITTAL OF CORRESPONDENCE
STD. 100A (REV. 9/87)

(Instructions on reverse
and SAM Section 0210)

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AGENCY/DEPT. SENT TO: Resources

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OFFICE OF
THE GOVERNOR

Correspondence

*** DUE DATE: 08/18/1998

INSTRUCTIONS:

Take Whatever Action you Consider Appropriate, Disregard Due Dat

NAME AND ADDRESS OF CORRESPONDENT

DATE OF INCOMING: 07/23/1998

Mr. William G. Bertain
Attorney at Law
1310 Sixth Street
Eureka, CA 95501

RECEIVED BY
Office of the Secretary

JUL 29 1998

RESOURCES AGENCY OF CALIFORNIA

SUBJECT(S)
Miscellaneous

re: Headwaters Deal

AGENCY OFFICE USE

INSTRUCTIONS TO DEPARTMENT

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(Return all suggested replies via agency office)

☐ REPLY DIRECT

☐ PREPARE REPLY FOR SIGNATURE OF _____ AND
RETURN WITH THE ATTACHED

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☒ TAKE WHATEVER ACTION YOU CONSIDER APPROPRIATE
& NOTIFY GOV. OFC. & AGENCY (COPIES IF ANSWERED)

☒ FURNISH GOV. OFC. & AGENCY WITH COPIES.

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DEPARTMENT USE

INSTRUCTIONS TO

☐ HANDLE AS INDICATED ABOVE
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☐ SPECIAL INSTRUCTIONS _____

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☐ FURNISH DEPARTMENT HEAD WITH A COPY

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FROM

DATE OF TRANSMITTAL

AGENCY OFFICE

DUE DATE

AGENCY APPROVAL BY

FROM

DATE OF TRANSMITTAL

DEPARTMENT DUE DATE

DEPARTMENTAL APPROVAL BY

WILLIAM G. BERTAIN
ATTORNEY AT LAW
1310 SIXTH STREET
EUREKA, CALIFORNIA 95501
TELEPHONE (707) 443-5078

July 23, 1998

Governor Pete Wilson
State Capitol
Sacramento, CA 95814

RE: Reconsideration of the Headwaters Deal

Dear Governor Wilson:

What to do about Headwaters? I submit that it is in the best interests of everybody except Charles Hurwitz that you withdraw your support for the Deal.

Much has transpired, much has changed, and much has been learned since the September 1996 Headwaters Deal was signed. Critical facts have now been revealed and significant events have unfolded - facts and events justifying complete reconsideration.

The temptation for elected officials to want to "put the Headwaters issue to bed", "to put it behind us", and "to do the Deal" is great - but for the greater good it must be avoided. Because of its fundamental and basic unfairness, its immense negative long-term consequences, and the bad example and precedent it will provide, the Headwaters Deal must be considered fatally flawed and receive full reconsideration in light of facts disclosed and questions raised in the past two years.

Because of its significance, Headwaters can be "a defining, legacy-making moment" for elected officials and politicians, both at the state and federal levels, for good or ill. In its present proposed form of resolution, the legacy will be one of sour taste, sadness, devastation, and injustice.

The currently proposed solution of the Headwaters controversy, as embodied in the 1996 Headwaters Agreement, an agreement entered into before later-discovered facts became known to the public, is now understood and viewed by most people as misconceived and fundamentally unfair. Most people, informed of the facts, have concluded that the Headwaters Deal is in fact offensive to the public good. It is far too generous to a corporation, Charles Hurwitz (the owner of 68% of Maxxam Corp.), who has conducted a nearly 13 year campaign of wanton destruction in the Redwood

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Region, pounding the hillsides with his rapacious and irresponsible harvesting to the point of causing a region-wide collapse of the watersheds, violating numerous laws, trampling on property rights of others, and proving absolutely untrustworthy. To reward a corporate pirate like Hurwitz in the manner proposed provides a terrible example to the youth of our country and our state. To have our leaders and our elected officials "wink" (for 12½ years) at the fraudulent methods by which Charles Hurwitz has accumulated his ill-gotten wealth is saddening. To know that he has used those millions which he has wrongfully obtained to pollute and confuse the political process is maddening. But to now witness both the unmitigated unmaking of the local economy and the willful, nearly guaranteed ravaging of the habitat necessary for the survival of several entire fisheries, is incomprehensible.

One has to wonder how sadly dysfunctional our form of representative government has become to result in such a sad state of affairs.

But what are the new facts, that after further consideration by you, should merit a new and well-thought out, fair, and effective solution to the Headwaters controversy? I submit that there are at least eleven points meriting your consideration.

1. WHY PAY \$380 MILLION FOR UNHARVESTABLE TIMBER?

Why is it Charles Hurwitz and his Maxxam Group are going to be paid \$380 million for timber that, under the clear application of the Endangered Species Act, cannot be legally harvested? This question has been posed by many people, including Sam Donaldson of ABC's Primetime Live on March 4, 1998. A copy of the transcript of Sam's conversations with John Campbell and Congressman Ralph Regula is attached (Attachment 1). The Headwaters Deal more than fully compensates Maxxam for the full value of the trees if all of them could be harvested. However, it compensates the local economy at less than one-thirtieth of the jobs and the economic impacts associated with the harvested value. Why should Maxxam get full harvest value for the trees and the local region and the workers get what amounts to zilch?

It still amazes me that Hurwitz has been able to bring his scam as far as he has. I think the basic questions must be asked: How is it that Hurwitz, whose rapacious harvesting practices were what triggered the application of the Endangered Species Act (ESA) to Pacific Lumber's timberlands in the first place, is being paid \$380 million for trees that he cannot cut under the ESA? I wish that some people in Washington and down in Sacramento would answer that questions.

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Contrary to the expressed hope in Senator Dianne Feinstein's October 7, 1996 Open Forum piece, a copy of which is attached (Attachment 2), the Headwaters Deal will "deliver an economic blow", a severe one, to the local communities that depend on the timber industry.

2. ONE BILLION BOARD FEET REMOVED FROM RESOURCE/JOB BASE

The Headwaters Habitat Conservation Plan (HCP) proposes to set aside a reported, minimum (as of 4/1/98) of an additional of 270 to 400 million board feet of old-growth redwood, on top of the 600 million board feet of old-growth redwood contained in the original 4,400 acres. This means that the Humboldt County area is going to be severely impacted by the removal of over 1 billion board feet of old-growth redwood from our local timber resource base. This timber base would have produced many jobs over the next several decades if harvested at a reasonable pace. The additional 400 million board feet is supposedly to be set aside for 50 years. This assumes that somebody will moth-ball an old-growth sawmill for at least 45 years. That is unlikely. What it really means is for all intents and purposes, a billion board feet is removed from our local economy. This is 2/3 the size of the 1½ billion board feet removed by the 1978 Redwood Park Expansion. Such a huge additional impact clearly merits full re-examination of the entire Headwaters transaction by our elected officials.

3. HCP WILL PUT SALMON STOCK ON BRINK OF EXTINCTION

Those groups and individuals most involved in the effort to restore the salmon fisheries on the Northcoast and throughout Northern California are expressing their adamant dissatisfaction with Pacific Lumber's HCP. The clear failure to employ the best available scientific methodology in the development of the HCP insures that salmon runs will be destroyed, or at the very least, kept on the brink of extinction. So not only will our area's old-growth redwood timber base be slashed to the point of non-existence, the tremendous economic benefit from salmon stock restoration will be lost as well.

4. REBUFF OF REQUEST FOR MITIGATION FUNDING TO DIVERSIFY WAS IRRESPONSIBLE AND UNFAIR

With the loss of over 1 billion board feet of old-growth redwood from our local timber base, Humboldt County is going to be severely impacted. So far, no significant mitigation program has been established to offset the negative and economic impact in this loss of good paying industrial jobs. The U.S. Congress has recently appropriated a (one-time) minimalist amount of \$10 million, but only to offset the loss of timber taxes to the government of Humboldt County over the next decade or so. This contrasts sharply with the compensation/ mitigation program established under the leadership of Congressman Phil Burton as the result of the removal of 1.5 billion board feet of old-growth redwood

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from our region's timber resource base following upon the 1978 Redwood Park Expansion. That package, including employment severances, EDA Grants and the construction of the Redwood National Park Highway by-pass exceeded \$260 million.

The public entities of the City of Eureka, The County of Humboldt, the Humboldt Bay Harbor Recreation & Conservation District, the Humboldt Bay Municipal Water District, and the Northwestern Railroad have each approved Memoranda of Understanding, calling on state and federal legislators to help mitigate the severe economic "hit" of the Headwaters Agreement by assisting in obtaining funding for public infrastructure improvements in Humboldt County which will help to diversify the local region's economy and provide a healthy employment base. The primary focus has been on constructing a much-needed marine terminal on Humboldt Bay and ancillary rail and highway improvements, as well as an adequately funded long-term program for watershed rehabilitation within Humboldt County. Copies of these resolutions are attached to this letter (Attachment 3).

Until now, the negative impact of the Headwaters Deal has been ignored. We ask that you afford us the opportunity to address this issue and discuss the possibility of obtaining mitigation funding to enhance our transportation infrastructure and restore the watersheds that have been destroyed by Maxxam's policy of plunder.

5. THE NEW PACIFIC LUMBER CANNOT BE TRUSTED

The phenomenal number of timber violations committed by the new Pacific Lumber Company, the unprecedented revocation of Pacific Lumber's license, and Pacific Lumber's wrecking of numerous watersheds in Humboldt County suggests that no rational person or public agency can trust the Pacific Lumber Company of Charles Hurwitz, John Campbell, and Tom Herman to perform according to any promised standard, to wit, even the very weak standard proposed in the HCP. As Judge Marilyn Miles of the Humboldt County Court recently stated on May 22, 1998, in sentencing Pacific Lumber for a small number of timber violations, regarding its refusal to willingly serve an additional time on probation rather than pay a fine of \$13,000, "I don't think that puts out a very good message". See attached copy of May 28, 1998 news article (Attachment 4).

6. PACIFIC LUMBER/HURWITZ NOT ELIGIBLE FOR HCP

It is unclear that Pacific Lumber and Charles Hurwitz can even qualify for the issuance of a "take permit" under 50 CFR 13.21(b)(1-3), which reads as follows:

(b) Upon receipt of a properly executed application for a permit, the Director shall issue the appropriate permit unless:

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(1) The applicant has been assessed a civil penalty or convicted of any criminal provision of any statute or regulation relating to the activity for which the application is filed, if such assessment or conviction evidences a lack of responsibility.

(2) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his application.

(3) The applicant has failed to demonstrate a valid justification for the permit and a showing of responsibility. (Emphasis added)
(See Attachment 5)

With over two hundred logging violations of the California Forest Practices Act on its record, and several convictions, along with the revocation of its Timber Operators license, it would appear that the evidence of responsibility for engaging in the "activity of logging for which Hurwitz/Maxxam/Pacific Lumber have applied" is lacking. Further, the devastation of the town of Stafford and the damage to the residential users in the Elk River watershed, both caused by irresponsible logging, would seem to establish that the applicant has failed to demonstrate a showing of responsibility as required under sub-paragraph (b)(3). Sub-paragraph (b)(1) therefore appears to prohibit issuance of such a permit. It should be noted that the California Regional Water Quality Control Board issued an order on March 9, 1998 to Pacific Lumber requiring that Pacific Lumber provide both domestic and agricultural water to the residents of the Elk River watershed, because of the damage caused by Pacific Lumber's irresponsible logging, to the water systems and supplies of a number of residents. In keeping with its abysmal reputation, Hurwitz' Pacific Lumber refused to supply water to the residents and appealed that order. In light of this and other noted demonstrations of bad faith, do you really believe Pacific Lumber should be issued a "take" permit? If so, on what basis can it be issued? On the word of Charles Hurwitz?

7. WHY PAY \$380 MILLION FOR TIMBER WORTH \$20 MILLION?

Why is it that Hurwitz and his Texas raiders are receiving \$380 million for the Headwaters Forest and valuation performed by the Forestry consulting firm of Mason Bruce & Girard for the Justice Department in July 1996, indicated that the value of Headwaters Forest was valued at \$20 million if the Endangered Species Act applies and \$250 million if it were not applied, that is if all of Headwaters was loggable. Although that valuation was prepared in July 1996, it was not released at that time. A copy of that valuation was obtained by the Washington Post in July 1997 (Attachment 6). Why was that valuation which was requested by the U.S. Department of Justice suppressed just prior to the entering into the Headwaters agreement? What was going on at the Interior Department at that time to keep such a critical document out of the public arena?

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8. UNPUBLICIZED RESOLUTION OF TAX TREATMENT FOR HURWITZ

A question remaining unanswered but of growing concern to those following the Headwaters controversy is the manner of resolution of the issue of the "closing agreements" described in Paragraph 6(c) of the September 1996 Headwaters Agreement, which reads as follows:

Paragraph 6: "It is agreed that the following shall each be a condition to closing of the Agreement:

(c) The issuance on or before the closing date by the Internal Revenue Service and the California Franchise Tax Board of closing agreements in form and substance sought by and satisfactory to the Pacific Lumber Parties, setting forth acceptable federal and California income tax consequences of the transactions;"

It would be very helpful and only fair if the matter of the tax treatment of the Headwaters Agreement were to be made public prior to any further action being undertaken by any legislative body.

9. EVEN HURWITZ REFUTES INFLATED VALUE

Has any person at any level of government been able to relate the valuation of \$380 million for the roughly 4,500 acres of old-growth redwood in the Headwaters Forest with the statement in Hurwitz' own "takings" case filed in April 1996 in the Court of Claims wherein it is stated that under a scenario where 6,000 acres would be withdrawn from forest management activity, the present discounted value of the future lost harvest would be \$166 million. It would be very much appreciated by the American citizenry, I believe, if we were to learn why it is that a wealthy Texan corporado is being paid more for less old-growth acreage than even he said 6,000 acres of old-growth was worth in his lawsuit. Are we entitled to an explanation? See page 76 of Hurwitz' Complaint for Adverse Possession, a copy of which is attached (Attachment 7).

10. THE "TAKINGS" ARGUMENT IS BOGUS

Regarding the "takings" case, has any Congressional Committee obtained an objective opinion from the U.S. Department of Justice regarding the strength or weakness of the Hurwitz "takings" arguments? It seems almost laughable to argue that Hurwitz would succeed under any reasonable Lucas case analysis. It is very doubtful that his case has any merit because, under the leading Lucas case theory, one has to be deprived of substantially all of the economic value of one's real property to be able to successfully allege a "taking". Clearly Hurwitz cannot do so because, even without the Headwaters, he would probably

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still have over \$1 billion worth of timber. And the creation by Maxxam in 1993 of Salmon Creek Properties to hold ownership of the Headwater Forest will clearly be seen by the Courts to be a sham, as far as the "takings" case is concerned, since it is a wholly-owned subsidiary of Pacific Lumber Company.

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11. HCP/SYP CONVERTS TO "PULPWOOD" ECONOMY

Based upon the Pacific Lumber outline/summary of its HCP/SYP, available on the Internet, it is pretty clear that Hurwitz' intention is not to transform Pacific Lumber's operation into a mature second-growth saw-log operation but into what can best be described as a "chip", a "pulpwood", or a "pecker pole" operation with a minimum of employees. The new Pacific Lumber Company apparently plans to operate on a maximum 40-50 year cycle with several re-entries on timber parcels during that period.

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As you know, this approach does not allow the forest to obtain maximum sustained production of high quality timber products. However, it does allow Hurwitz to reduce employment, make Pacific Lumber's operations dismally robotic, and produce little labor-intensive activity. You are urged to review the HCP/SYP carefully with an eye toward the drastic reduction of employment that will come, not merely from the removal of old-growth from the resource base, but from the complete conversion of Pacific Lumber to a "short-rotation" approach - an approach that guarantees minimal employment.

The logical result of the Headwaters Agreement/Headwaters HCP will likely be the sale of Pacific Lumber to Simpson Timber or, perhaps, Sierra Pacific, within one to five years. It is pretty clear that Maxxam wants out of Humboldt County. And the Headwaters Deal, as it stands, facilitates the implementation of Hurwitz' exit scenario, or end-game strategy, while simultaneously unjustly enriching one of the true rogues of the American economy.

A CONCLUSION WITH A FAIR SOLUTION

More could be said about how there can be no peace without justice, how the end cannot justify the means, how soft-money paths to partisan groups corrupt our system of government, how money-bag-man Tommy Boggs is likely to get his percentage of the Deal, how the "debt for nature" concept for Headwaters is utterly absurd and unjust, and how the social disruption and family stress likely to result from the Deal has been ignored totally by the legislative and executive branches - but it would be a mere sad litany to add to the tale of woe introduced to Humboldt County by the Hurwitz invasion.

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Suffice it to say, I urge you to give a thorough reconsideration to the Headwaters Deal. All aspects need a thorough airing and full blown discussion. It is not the time to obtain "closure" without achieving even a modicum of justice. There is still time to do justice. Among other things, a full analysis of the impact on the local economy needs to be done before the Board of Supervisors endorses the current Headwaters/HCP proposal.

So what is the sensible, balanced solution? I believe that the preferred alternative is to:

1. Reject the HCP as inadequate and counter-productive, and
2. Enforce the law, namely, the Endangered Species Act, the Clean Water Act, the Forest Practices Act, and
3. Reduce the combined federal-state Headwaters-related expenditures by \$200 million, leaving \$180 million for the following:
 - (a) At least \$10 million for enforcement.
 - (b) At least \$60 million for public infrastructure improvement to assist in diversifying the Humboldt regional economy by construction of a marine terminal for our deep-water port and revitalizing our railroad.
 - (c) Substantial watershed rehabilitation throughout our area, including employment of displaced workers.
 - (d) A fair and substantial severance/compensation package for those otherwise displaced workers.

I want to thank you for taking the time to read this letter. I am sure that you are pretty well fed up with the whole issue, but I hope you can find the energy and patience to undertake a full reconsideration of the Headwaters Deal. I believe that a solution along the lines that I have outlined makes sense and is doable. I would be privileged to speak with you regarding this entire matter if you deem it appropriate.

Very truly yours,


WILLIAM G. BERTAIN

WGB/flh\Encl:

ABC NEWS

SHOW: ABC PRIMETIME LIVE (10:00 pm ET)

LENGTH: 813 words

MARCH 4, 1993

HEADLINE: HOLD ON!

Transcript # 98030405-j03

BYLINE: SAM DONALDSON, DIANE SAWYER, SAM DONALDSON

HIGHLIGHT:

SPENDING MILLIONS TO SAVE ALREADY-PROTECTED TREES

BODY:

BE IN ITS FINAL FORM AND MAY BE UPDATED.

SAM DONALDSON: What if we told you that \$380 million of taxpayer money was about to be spent to prevent the cutting of redwood trees that by law cannot be cut? Crazy? Maybe -- but true. And when we discovered it, we couldn't wait to say "Hold On!"

(voice-over) These magnificent redwoods in Humboldt County, California are owned by Pacific Lumber Company, which is in the business of cutting timber for profit. But in the case of these trees, the federal and state governments have agreed to buy them in a 7,500 acre package for \$380 million in order to keep the chainsaws away, even though -- and get this -- by law Pacific Lumber can't touch them.

(on camera) You could not go in and cut timber today.

JOHN CAMPBELL, Pacific Lumber Company: No, that's true. But under the Constitution, we should be compensated for it.

SAM DONALDSON: (voice-over) John Campbell, Pacific Lumber's president, had a problem. The marbled murrelet (ph), an endangered bird, was discovered nesting in these trees, and the Endangered Species Act protects its habitat. The first thing Pacific Lumber did was threaten to cut the trees anyway, sparking protests from environmentalists. Leaving nothing to chance, however, Pacific Lumber formed its own environmental group to advocate saving the trees by paying just compensation to the owner.

JOHN CAMPBELL: We went out and tried to get additional people to buy into the

ATTACHMENT #

ATTACHMENT 2

SAM DONALDSON: (voice-over) Pacific lumber also hired Tommy Boggs' Washington law firm, which successfully argued to the Clinton administration the compensation due should be based on how much the trees are worth, even though they can't be cut. In such cases, the federal government usually pay land owners only the land's market value, which for this land was slightly more than \$20 million, according to a study commissioned by the federal government -- not \$380 million.

RALPH REGULA, (R) Ohio: Having been there and looked at it, it seems to me that it's overvalued.

SAM DONALDSON: (voice-over) House Appropriations Subcommittee chairman Ralph Regula says the Clinton administration wanted to go along with Pacific Lumber.

(on camera) Because of the Endangered Species Act, the law already says you cannot log these redwoods.

RALPH REGULA: That's correct.

SAM DONALDSON: And yet, taxpayers are being asked to supply hundreds of millions of dollars to buy the land?

RALPH REGULA: Well, this is true. But it was a commitment made by the administration.

JOHN GARAMENDI (ph), Interior Deputy Secretary: Is it expensive? You bet it is. Is it worth it? We think so.

SAM DONALDSON: (voice-over) Interior deputy secretary John Garamendi, who negotiated the deal, says he feared that if Pacific Lumber took the government to court it might cost even more.

JOHN GARAMENDI: These trees are worth about \$100,000 a tree, if you can cut them.

SAM DONALDSON: (on camera) If you can cut them.

JOHN GARAMENDI: Well, they may very well be cut. We don't know for sure.

SAM DONALDSON: And now, we'll never know. Rather than go to court, where the precedents were overwhelmingly on their side, the federal and California state governments are now going to hand over hundreds of millions of dollars of your

The Last Best Hope for Headwaters

By Dianne Feinstein

TEN YEARS SEEMS like an eternity to those of us who have participated in what seemed like an endless debate over preserving the Headwaters Forest. Yet it is merely a fraction of time in the 2,000-year life of the magnificent redwoods over which this increasingly pitched battle has been waged.

In the decade-long standoff, no solution has ever been within our grasp. Two statewide bond initiatives on the ballot that would have raised funds to purchase Headwaters were rejected by California voters; federal legislation to acquire the Headwaters failed as well. The state of California says it has no legal recourse to prevent Pacific Lumber from logging its own property. And, after staying out of the Headwaters for 10 years, Pacific Lumber made it clear that the company intended to begin salvage logging immediately after the marbled murrelet nesting season ended two weeks ago. Prospects for a resolution certainly seemed dim as the logging date approached.

Against this backdrop, I was asked a month ago to help move the negotiations forward. After more than 100 hours of intense negotiations, a tentative agreement was hammered out for the federal and state governments to jointly purchase the most sensitive areas of old-growth redwoods — the Headwaters Forest and the Elkhead Springs Grove — and enough surrounding acreage to protect these fragile ecosystems, nearly 7,500 acres. The price is \$330 million in cash and/or assets.

Is it everything the environmentalists wanted? No — they wanted 60,000 acres. This was not an obtainable goal; we couldn't afford to purchase that much land. Is it everything Charles Hurwitz and Pacific Lumber wanted? No — they wanted substantially more money. They believe the Headwaters alone is worth in excess of \$700 million. We couldn't afford that. It is a compromise, and the agreement is as fragile as the ecosystem we are trying to protect.

But it is important to understand that the agreement is a historic move forward. Not only does the agreement — if it is completed — protect the heart of the ancient redwood groves, but it is also the



BY ASSOCIATED PRESS

A protest near Headwaters Forest

largest effort at habitat conservation in U.S. history.

Under the tentative agreement, which was signed by the Department of the Interior, the state of California, Pacific Lumber and its parent company, Maxxam Inc., the federal and state governments will purchase 7,500 acres of forest. The preserve will include about 3,000 acres of old-growth redwoods known as the Headwaters Forest, 425 acres of old-growth known as Elkhead Springs Grove, plus an additional 4,000 acres of second-growth land to provide an environmental "buffer zone" around the most sensitive areas.

In addition, Pacific Lumber will submit a plan for habitat conservation (known as an HCP) to the U.S. Fish and Wildlife Service in order to conduct logging within 205,000 acres of Pacific Lumber holdings in Humboldt County. The state requires a "sustained yield plan, or SYP, as well. The federal and state governments, for their part of the deal, must approve or deny the company's HCP and SYP plans within 10 months.

Some say a scientifically sound habitat conservation plan cannot be completed in 10 months. However, the Department of Interior's own guidelines specify that HCP's should take no more than 10 months to complete, and the environ-

mentalists are welcome to participate the process by reviewing and commenting on any plan submitted by Pacific Lumber before it is approved.

As part of the accord, Pacific Lumber has agreed not to conduct any logging operations, including salvage logging of dead and dying trees, in the 7,500 acre area during the 10-month period while the agreement is being finalized and the habitat conservation plan developed.

Both sides have tremendous incentive to turn this tentative agreement into permanent solution. The state and federal governments want to protect environmentally sensitive areas, permanently protect the Headwaters and not deliver an economic blow to the community that depend on the timber industry for jobs. Pacific Lumber wants to move beyond the standoff over the Headwaters Forest and log its forest land, which not only keeps the company in business but also keeps its employees on the payroll. The agreement struck between the sides can accomplish both if everyone delivers on their part of the deal.

This agreement is fair and practical. The alternatives, however, are pretty depressing: Confrontations between logging environmentalists and the logging communities in Humboldt County will only worsen without an agreement.

This compromise offers our last and best hope to preserve these magnificent redwoods. If the plan goes forward, the Headwaters Forest will become a treasured federal and state preserve — and the largest habitat conservation plan in history will be implemented. Jobs will be saved, the forest will continue to provide ample habitat for endangered species like the marbled murrelet, and our children will be able to experience a small part of the virgin forests that once competed the West Coast.

Now is the time for all of us to unite behind the agreement. Not to do so would destroy this chance, which could very well be our last ever, to preserve the magnificent giants for generations come.

Dianne Feinstein is California's senior senator.

ATTACHMENT #.

MEMORANDUM OF UNDERSTANDING

WHEREAS, the County of Humboldt, the Humboldt Bay Harbor, Recreation and Conservation District, the City of Eureka, the Northwestern Pacific Railroad, and the Humboldt Bay Municipal Water District recognize the Headwaters Agreement of September 28, 1996, while resolving a long standing controversy in a manner satisfactory to many people, will remove in excess of \$500 million worth of merchantable timber from the local region's resource base and that state and federal assistance is necessary to offset the economic impact resulting therefrom; and

WHEREAS, the parties hereto recognize that time is of the essence of the preparation of information, data, and arguments necessary to justify to state and federal legislators and administration officials funding of public infrastructure improvements and projects which will assist in diversifying the local region's economy and provide a healthy employment base.

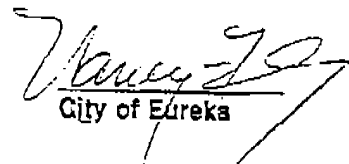
NOW THEREFORE BE IT RESOLVED by and between the public entities signatory to this Memorandum of Understanding that:

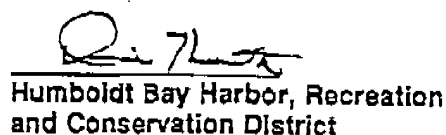
For the greater good of our community, the County of Humboldt, the Humboldt Bay Harbor, Recreation and Conservation District, the City of Eureka, and the Northwestern Pacific Railroad hereby agree to join in a common effort to obtain sufficient funding from federal and state governments to offset the loss of in excess of \$500 million of old-growth redwood timber resource from this region's economy and, more specifically, to pool our efforts, to minimize disagreements, and achieve, over the next 6 to 10 weeks, the assembling of sufficient data, the marshalling of convincing arguments, and the appropriate use of effective contacts to secure funding to:

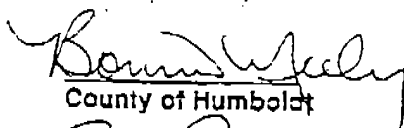
- (a) Construct the much needed marine terminal on Humboldt Bay, including the proposed harbor dredging project, and ancillary rail and highway improvements.
- (b) Implement an adequately funded, long-term program for watershed rehabilitation and maintenance of water quality enhancement within Humboldt County.
- (c) To construct other public infrastructure and economic development projects described in Humboldt County's OEDP, and the Humboldt Bay Harbor District's Capital Improvement Plan.
- (d) To offset lost taxes.
- (e) To establish retraining programs.

The parties hereto further resolve that the joint pursuit of the goals enunciated in this Memorandum of Understanding will demonstrate to decision-makers both locally and nationally that our community is united in its efforts to achieve a healthy diversified local economy.

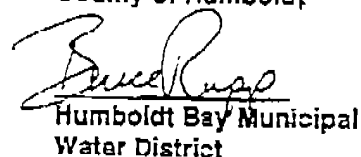
Dated:


City of Eureka


Humboldt Bay Harbor, Recreation
and Conservation District


County of Humboldt


Northwestern Pacific Railroad


Humboldt Bay Municipal
Water District

ATTACHMENT
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**Humboldt County Board of Supervisors
Agenda Item Transmittal**

From: Supervisor Bonnie Neely
Meeting Date: December 3, 1996
Time Required: 15 Minutes

Contact for Information

I-3

Name: Betty Bates

Telephone: 445-7509

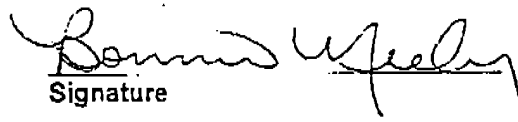
Subject: Joint Effort to Pursue Federal/State Funding to Offset Impacts to the Local Economy as a Result of Headwaters Agreement

Summary: On September 28, 1996, the federal government and Pacific Lumber Company entered into a tentative agreement to preserve Headwaters Forest in Humboldt County. As a result, \$500 million worth of merchantable timber will be removed from this region's resource base. The impact to our local economy must be mitigated.

Since time is of the essence, information, data and arguments must be prepared to justify to the state and federal legislators and administration officials funding of public infrastructure improvements and projects which will assist in diversifying the economy.

Requested Action:

Take appropriate action.


Signature

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BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor
Seconded by Supervisor
and unanimously carried by those members present, the
Board hereby approves the recommended action contained
in this Board report. Board Order No. _____

Dated: _____

LORA FREDIANI
Clerk of the Board

By: _____ Lora Frediani

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified Copy of Portion of Proceedings, Meeting of Tuesday, December 3, 1996

**SUBJECT: JOINT EFFORT TO PURSUE FEDERAL/STATE FUNDING TO OFFSET
IMPACTS TO THE LOCAL ECONOMY AS A RESULT OF
HEADWATERS AGREEMENT (SUPERVISOR NEELY)**

ACTION: Adopt Memorandum of Understanding as shown on attachment.

Adopted on motion by Supervisor Neely, second by Supervisor Dixon, and the following vote:

AYES: Supervisors Dixon, Heider, Fulkerson, Neely, and Kirk
NAYS: None
ABSENT: None
ABSTAIN: None

STATE OF CALIFORNIA)
County of Humboldt)

I, LORA FREDIANI, Clerk of the Board of Supervisors, County of Humboldt, State of California, do hereby certify the foregoing to be a full, true, and correct copy of the original made in the above-entitled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my Office.

pc: Board Assistant
CAO
Economic Development
County Counsel

attachment

IN WITNESS WHEREOF, I have hereunto
set my hand and affixed the Seal of said
Board of Supervisors.

LORA FREDIANI

Clerk of the Board of Supervisors of the
County of Humboldt, State of California


December 3, 1996

MEMORANDUM OF UNDERSTANDING

WHEREAS, the County of Humboldt, the Humboldt Bay Harbor, Recreation and Conservation District, the City of Eureka, the Humboldt Bay Municipal Water District and the Northwestern Pacific Railroad recognize that the Headwaters Agreement of September 28, 1996, while resolving a long standing controversy in a manner satisfactory to many people, will remove in excess of \$500 million worth of merchantable timber from the local region's resource base and that state and federal assistance is necessary to offset the economic impact resulting therefrom; and

WHEREAS, the parties hereto recognize that time is of the essence for the preparation of information, data, and arguments necessary to justify to state and federal legislators and administration officials funding of public infrastructure improvements and projects which will assist in diversifying the local region's economy and provide a healthy employment base.

NOW, THEREFORE BE IT RESOLVED by and between the public entities signatory to this Memorandum of Understanding that:

For the greater good of our community, the County of Humboldt, the Humboldt Bay, Harbor, Recreation and Conservation District, the City of Eureka, the Humboldt Bay Municipal Water District and the Northwestern Pacific Railroad hereby agree to join in a common effort to obtain sufficient funding from the federal and state governments to offset the loss of in excess of \$500 million of old-growth redwood timber resource from this region's economy and, more specifically, to pool our efforts, to minimize disagreements, and achieve, over the next 6 to 10 weeks, the assembling of sufficient data, the marshaling of convincing arguments, and the appropriate use of effective contacts to secure funding to:

- (a) Construct the much needed marine terminal on Humboldt Bay with ancillary rail and highway improvements.
- (b) Implement an adequately funded, long-term program for watershed rehabilitation and maintenance of water quality enhancement within Humboldt County.
- (c) Funding to construct other public infrastructure and economic development projects described in Humboldt County's OEDP.
- (d) To offset lost taxes.
- (e) To establish retraining programs.

The parties hereto further resolve that the joint pursuit of the goals enunciated in this Memorandum of Understanding will demonstrate to decision-makers both locally and nationally that our community is united in its efforts to achieve a healthy diversified local economy.

DATED:

JULIE FULKERSON, Chair



Humboldt County Digest

Palco SYP/HCP In Agency Review

State and federal agencies received final review copies of Pacific Lumber Co.'s logging and habitat plans Tuesday.

Vicki Campbell, from the National Marine Fisheries Service, said agencies began reviewing the combined sustained yield/habitat conservation plans with a goal of releasing it for a 90-day public comment in mid-June. The required environmental documents are expected in mid-July for a 60-day public review.

"We're still in a major crunch," Campbell said, noting that release dates will be met only "if all goes well."

The plans aren't final yet, with changes likely to result from the agency review now in progress. Changes may also come from public input, Campbell said, if there is new information or agencies missed or misinterpreted something.

Part of the 600-page document can be accessed via the Internet at www.palco.com. The agencies are working with the state to get all the documents on-line by the time public comment begins.

California must hold a public hearing on the sustained yield plan within 45 days of its release. And Campbell said the agencies want to hold other public meetings.

Approval must be gained for Pacific Lumber's habitat and logging plans by March 31, 1999, before \$250 million in federal funding can be released to buy the 7,500 acre Headwaters Forest. State funding for its \$130 million share is still uncertain, with legislators recently removing the funds from the governor's budget and placing it in separate bills.

PL Accepts Fines, No Probation

Pacific Lumber Co. rejected probation and opted to pay maximum fines of \$13,150 for violating the state's Forest Practices Act.

The company was found guilty of five misdemeanor criminal counts last Friday by Judge Marilyn Miles, who then also revoked the probation Pacific Lumber was given in July 1997.

In Tuesday's sentencing hearing, Miles offered three years' probation in lieu of fines. Conditions of probation would have included that Pacific Lumber obey all laws, forest practice rules, statements John Campbell made to employees about logging practices after the California Department of Forestry sought to revoke the company's timber operator's license, and stringent wet weather operations imposed by the CDF in issuing a provisional license for 1998.

Pacific Lumber Resource Manager Tom Herman testified that those restrictions were so stringent the company was unlikely to receive any further misdemeanor citations from CDF. But neither he nor the company's attorney Bill Carson was willing to accept those conditions of probation.

Before imposing sentence, Miles said, "I don't think that puts out a very good message."

"This was an opportunity for PL to make a statement about how strong their commitment is to obeying the rules," said Deputy District Attorney Andrew Isaac. "They bought their way out."

The misdemeanor convictions related to problems with logging and road maintenance near streams and in rainy weather.

Anti-Pacific Lumber activists said they felt someone should have gone to jail. But Isaac said that under criminal law he must have evidence that company higher-ups urged workers to break the law in order to charge them with the misdemeanors. He did not have that evidence. Neither did Isaac consider it "appropriate" to charge individual workers who operating equipment in violation of the forest practice rules.

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50 CFR 13.21(e)(2)

SUBPART C - PERMIT ADMINISTRATION

§ 13.21 Issuance of permits.

(a) No permit may be issued prior to the receipt of a written application therefor, unless a written variation from the requirements, as authorized by § 13.4, is inserted into the official file of the Bureau. An oral or written representation of an employee or agent of the United States Government, or an action of such employee or agent, shall not be construed as a permit unless it meets the requirements of a permit as defined in 50 CFR 10.12.

(b) Upon receipt of a properly executed application for a permit, the Director shall issue the appropriate permit unless:

(1) The applicant has been assessed a civil penalty or convicted of any criminal provision of any statute or regulation relating to the activity for which the application is filed, if such assessment or conviction evidences a lack of responsibility.

(2) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his application;

(3) The applicant has failed to demonstrate a valid justification for the permit and a showing of responsibility.

(4) The authorization requested potentially threatens a wildlife or plant population, or

(5) The Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(c) Disqualifying factors. Any one of the following will disqualify a person from receiving permits issued under this Part.

(1) A conviction, or entry of a plea of guilty or nolo contendere, for a felony violation of the Lacey Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act disqualifies any such person from receiving or exercising the privileges of a permit, unless such disqualification has been expressly waived by the Director in response to a written petition.

(2) The revocation of a permit for reasons found in § 13.28 (a)(1) or (a)(2) disqualifies any such person from receiving or exercising the privileges of a similar permit for a period of five years from the date of the final agency decision on such revocation.

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House Balks at Concessions
For Conservation of Redwoods

By Joby Warrick
Washington Post Staff Writer
Thursday, July 24, 1997; Page A01

Texas millionaire Charles Hurwitz was vowing to cut down the world's largest private stand of ancient virgin redwoods one by one unless the government met his price, which included, on one particular day, Alcatraz.

"I'd tear down that crumbling old building," Hurwitz told negotiators, referring to the historic island prison in San Francisco Bay, "and I'd put in a nice hotel."

State and federal officials rejected the Alcatraz proposal, but last fall agreed instead to give Hurwitz cash: more than \$300 million for 7,500 acres of environmentally sensitive lands in California's northern Humboldt County, including about 3,000 acres of old growth redwoods. The price is roughly twice the amount the government spent on acquiring parkland nationwide last year.

While the Clinton administration insists the deal was fair and necessary to protect one of the nation's environmental treasures, the kind of green-for-greenery trade that Hurwitz negotiated is attracting increasing controversy in Washington.

Hurwitz, a junk-bond financier turned timber magnate, is one of a string of entrepreneurs in the past year who have sought cash or other concessions from the government by threatening to destroy environmental resources or to create eyesores in public parks. The resulting negotiations yielded settlements that are considered major environmental victories by the White House, including the purchase of Hurwitz's Headwaters Grove in northern California and a \$65 million settlement to halt a planned gold mine near Yellowstone National Park.

This month, some members of Congress are balking at appropriating the money to pay for the deals, which are even raising questions among conservative Republicans who are strong supporters of protecting the rights of private property owners. The House last week voted to strip from the Interior Department a \$700 million appropriation that includes money for Hurwitz and the owners of the New World Mine near Yellowstone. The Senate is expected to retain the \$700 million in a vote next week, but Senate Energy and Natural Resources Committee Chairman Frank H. Murkowski (R-Alaska) says the money will be contingent on authorizing legislation and oversight hearings.

Most of the questions surround the Hurwitz deal, which some critics say represents both a bad precedent and a gross overpayment, a view supported by at least one independent assessment of the property that was conducted last year by the Justice Department.

"In the absence of appraisals, it's hard to know if these were good deals or not," said Rep. Ralph Regula (R-Ohio), the House Appropriations Interior subcommittee chairman. "The administration is just making the policy and sending us the bill."

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announced a Sept. 15, 1996, deadline to begin cutting down some of the old growth trees if a settlement was not reached. He even established a self-described conservation group to lobby government officials to buy the land.

Finally, after intervention from Sen. Dianne Feinstein (D-Calif.), a deal was struck that appeared to offer something for everyone. Politicians would be able to claim credit for helping save the giant trees; Hurwitz and a smaller timber company received a \$380 million commitment. The Texan also agreed to drop his lawsuit and abide by a government-sanctioned conservation plan in managing the rest of his 193,000 acres.

Nearly a year later, government negotiators, conservationists and Hurwitz himself contend that the \$380 million deal was a victory for the environment and a bargain for the country. Both sides cite a U.S. Forest Service assessment four years ago that estimated the value of the timber at \$500 million.

"This is a precious ecological resource," said Kathleen McGinty, chairman of the White House Council on Environmental Quality. "In addition to its visual beauty, it is extremely rich as a habitat for threatened and endangered species." Noting that Congress had been leading the push for a Headwaters purchase long before the White House intervened, McGinty expressed confidence that congressional leaders would honor a commitment made during budget talks to authorize the purchase.

Others insist the deal wasn't a bargain at all. For one thing, the purchase increases by only a few percent the acreage of old growth redwoods that already is protected in California parks. Moreover, the Headwaters tract is in mountainous terrain and surrounded by private tracts, making accessibility difficult for would-be visitors.

The grove's reported \$500 million assessment is itself in dispute. The 1993 U.S. Forest Service appraisal, which gauges the land's timber value, assumes that loggers would harvest virtually all the trees, unencumbered by environmental restrictions.

A little-known assessment made last year by the California consulting firm Mason, Bruce & Girard Inc. took those restrictions into account and came up with a vastly lower figure. Assuming current environmental regulations would remain in place, the company appraised the tract's value at only \$20 million. Lifting the restrictions raised the estimate to \$250 million. The study, obtained by the Natural Resources News Service and made available to The Washington Post, examined the same 4,500-acre portion of the Headwaters tract as the 1993 survey.

Administration officials played down the assessment's relevance. One source, who spoke on the condition of anonymity, said the survey was "not a formal appraisal" and not as reliable as the earlier estimate.

But to congressional critics, the more important issue was not the valuation of the timber but the potential long-term cost of the administration's land acquisition strategy.

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Attorneys for Plaintiffs

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

THE PACIFIC LUMBER COMPANY,
a Delaware corporation; SCOTIA PACIFIC
HOLDING COMPANY, a Delaware
corporation; and THE SALMON CREEK
CORPORATION, a Delaware corporation,

Plaintiffs,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

COMPLAINT FOR INVERSE CONDEMNATION.

ATTACHMENT
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2 *Access roads.* The inability to use Owl Creek, Allen Creek, and
3 Headwaters will deprive Pacific Lumber of the ability to construct access roads
4 to other parts of its timberlands.
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8 *Usable natural resources for other Pacific Lumber lands.* Natural
9 resources used on other parts of the Pacific Lumber forest, such as quarry rock,
10 which is used to build roads and road surfaces for the entire property, have
11 been lost. There are rock pits in Headwaters, for instance, that could have
12 been used for this purpose.
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16 *Labor displacement.* There will be labor displacement, resulting in
17 the need for severance packages, loss of community, and loss of schools. It is
18 necessary for Pacific Lumber to have, in Scotia, a stable community with jobs,
19 the attendant health and disability plans, retirement plans, scholarships,
20 schools and the like. In contrast is the town of Orick, California, where 70%
21 of people went on welfare after lumbering was replaced by a park.
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25 *Other economic impact.* In a 1995 study of the economic effects of
26 the USFWS proposed Critical Habitat Designation, a finance professor
27 consulted by Pacific Lumber concluded the losses would be staggering. One
28 scenario assumed about 33,000 acres would be withdrawn from forest.

1 management activity, resulting in an estimated 367 jobs lost directly at Pacific
2 Lumber, and 1,280 jobs lost region-wide, with the annual value of logs not
3 harvested at \$25,650,000, and a discounted value of future lost harvest at over
4 \$460 million. Under a 6,000 acre scenario, an estimated 352 Pacific Lumber
5 jobs would be lost, and 1,160 region-wide jobs would be lost. The annual
6 value of logs not harvested would be \$11,025,000, with the present discounted
7 value of the future lost harvest at \$166 million.

8 The professor concluded that the impact on Pacific Lumber's
9 employment rolls is much more than proportional to the reduction in
10 overall harvestable acreage. Mills "A" and "B", the oldest of the mills, are
11 specifically configured to mill the large diameter old growth trees. That
12 lumber has high market value, and the production process justified by the
13 end product is much more labor intensive than processes used at the other
14 mills. Thus, the number of jobs that will be lost with the loss of old growth
15 — and the consequent inability of the company to function economically — is
16 significantly greater than it would be simply as a measurement of the old
17 growth acreage as a proportion of the company's entire forestland.

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20 157

21 ✓ Attorneys' fees. Pacific Lumber had to incur attorneys' fees,
22 including the Murrelets' attorneys' fees, in excess of \$2 million in the
23 Marbled Murrelet litigation. Those fees are part of the property taken from
24 Pacific Lumber as a result of the Federal ESA's application to Pacific Lumber's
25 land.
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